IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Appeal No.88 of 2005

State of Uttaranchal & Ors.

... Appellants

Vs.

Amar Dev & Anr.

...Respondents

Mr. B.D. Kandpal, Deputy Advocate General with Mr. Pankaj Tangwan, Brief Holder for the State/appellant nos.1 and 2
Mr. Shobhit Saharia, Advocate for appellant no.3/THDC
Mr. D.C.S. Rawat, Advocate for the respondents

Hon'ble B.S.Verma, J. (Oral)

This appeal, preferred under section 54 of the Land Acquisition Act 1984 *(for short, the Act)*, is directed against the judgment and decree dated 29.11.2003 passed by Additional District Judge, Tehri Garhwal, in Land Acquisition Reference No.40 of 2002, Amar Dev and another vs. State of Uttaranchal.

Relevant facts, giving rise to the present appeal, are that the Special Land Acquisition Officer/Collector *(for short SLAO)*, Tehri Garhwal proceeded for acquisition of land on the basis of Notification issued by the State Government under Section 4 of the Land Acquisition Act, 1894 *(for short the Act)* for acquisition of 2 Nali, 12 Muthi and 3 Nali, 2 Muthi land including the house and land belonging to the claimants/respondents for construction of Tehri Dam Project which was published in the official Gazette on 1.8.1992 followed by notice under Section 6 of the Act, which was published in the Gazette on 1.1.1994. The SLAO, after completing necessary formalities, has passed the Award thereby the cost of the house of the claimants-respondents was fixed Rs.5,69,900/- and

depreciation value thereof was assessed at Rs.73,900/-, which was deducted from the value of the house and compensation of Rs.4,96,000/- was awarded as cost of house and the value of land was determined as Rs.25,066/- and therefore fixed the compensation as Rs.5,21,066/- vide Award dated 28.1.1999. Being dissatisfied by the said Award, the claimants-respondents filed objections, which gave rise to a reference under Section 18 of the Act before the District Judge. The said reference was registered as Land Acquisition Reference No. 40 of 2002.

The learned reference Court framed two issues in the case. Issue no.1 related to inadequacy of the compensation and issue no.2 related to relief.

The claimants have examined P.W.1 Amar Dev Bhatt and P.W.2 K.C. Kudiyal and have filed list 22-ga and also filed valuation report. From the side of the State, in oral evidence, D.W.1 Rajesh Prasad Bhatt has been examined and documentary evidence has also been filed in evidence.

The learned Reference Court, after considering the evidence led by the parties, has held that the cost of the house of the claimants would be Rs.5,91,210/- but they have been paid Rs.4,96,000/-. Therefore, claimants are entitled for more compensation of Rs.85,210/-. Similarly, the cost of the land would be Rs.88,125/- but they have been paid Rs.25,066/-, therefore, the claimants are entitled to get additional compensation at Rs.63,059/-. Accordingly, by the judgment and decree dated 29.11.2003, it has been ordered that the claimants are

entitled to get additional compensation as Rs.1,48,269/-, in addition to solatium, interest etc. as mentioned therein.

Feeling aggrieved by the award and decree of the reference court, the State has preferred the present appeal before this Court.

Learned Brief Holder appearing for the State has vehemently urged that the learned reference court committed a manifest error of law in calculating the compensation towards cost of foundation and wrongly deducted depreciated value.

I have perused the judgment and decree impugned in this appeal as well as valuation report which was filed on record.

This issue has been decided by the learned reference court on issue nos.1 and 2. On issue no.1, the learned reference court, on the basis of valuation report paper no.34-C which was made by the appellant/defendants DW1 Ganesh Prasad Bhatt, was assessed after depreciation value Rs.4,96,000/-. The reference court has held that the SLAO has committed an error in calculating the compensation separately of the land and building. The land was assessed @ Rs.4266.66 per Nali. Further, the value of the land was calculated on agricultural rate. The reference court assessed the rate of land at the commercial rate at Rs.15,000/- per Nali.

With regards to the compensation of house, the learned reference court has considered other deduction factors that the house was constructed in the year 1988

and assessed the value of the house at Rs.5,91,210/-, out of which, Rs.4,96,000/- has been paid to the respondents, therefore, the respondents are entitled for additional compensation of Rs.85,210/- for the house.

I have gone through the impugned judgment and also perused the record. The finding of the reference court is based on cogent and reliable evidence led by the parties. The compensation awarded to the claimants is just and proper. I do not find any reason to interfere in the impugned judgment and order passed by the reference court.

The appeal lacks merit and is dismissed. Impugned judgment and decree dated 29.11.2003 passed by Additional District Judge, Tehri Garhwal, in Land Acquisition Reference No.40 of 2002, Amar Dev and another vs. State of Uttaranchal, is affirmed. No order as to cost.

(B.S.Verma,J.)
12.03.2013

Rajni